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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FRANCISCO SANDOVAL HUERTERO;  
et al.,

Petitioners,

v.

MICHAEL B. MUKASEY, Attorney  
General,

Respondent.

No. 07-74129

Agency Nos. A95-191-838  
A95-191-839

MEMORANDUM\*

On Petition for Review of an Order of the  
Board of Immigration Appeals

Submitted March 10, 2008\*\*

Before: T.G. NELSON, TASHIMA and BYBEE, Circuit Judges.

This is a petition for review of the Board of Immigration Appeals' ("BIA")  
order denying petitioners' motion to reopen or reconsider.

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\* This disposition is not appropriate for publication and is not precedent  
except as provided by 9th Cir. R. 36-3.

\*\* The panel unanimously finds this case suitable for decision without  
oral argument. *See* Fed. R. App. P. 34(a)(2).

Respondent's motion to dismiss this petition for review for lack of jurisdiction is granted. *See* 8 U.S.C. § 1252(a)(2)(B)(i); *Fernandez v. Gonzales*, 439 F.3d 592, 601 (9th Cir. 2006) (concluding that the court lacks jurisdiction to review the Board of Immigration Appeals' denial of motion to reopen for failure to establish a prima facie case if a prior adverse discretionary decision was made by the agency).

Respondent's motion to dismiss is also construed as a motion, in part, for summary disposition. So construed, respondent's motion is granted. The regulations provide that a motion to reconsider "must be filed with the Board within 30 days after the mailing of the Board decision." 8 C.F.R. § 1003.2(b)(2). The BIA did not abuse its discretion in denying the petitioners' motion to reconsider as untimely where it was filed about two months late. *See Lara-Torres v. Ashcroft*, 383 F.3d 968, 972 (9th Cir. 2004)

The temporary stay of removal confirmed by Ninth Circuit General Order 6.4(c) shall continue in effect until issuance of the mandate. The motion for stay of voluntary departure, filed after the voluntary departure period had expired, is denied. *See Garcia v. Ashcroft*, 368 F.3d 1157, 1159 (9th Cir. 2004).

All other pending motions are denied as moot.

**PETITION FOR REVIEW DENIED in part; DISMISSED in part.**